

Waging War with Civilians

Asking the Unanswered Questions

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Editorial Abstract: When we properly consider war as Carl von Clausewitz did—as unique situations limited by numerous ambiguities—how can we possibly write a contract for war? Yet, this is one of the challenges that comes from using more and more privatization to save costs in increasingly technocomplex operations. As Lt Col Lourdes Castillo points out, contractors are no longer restricted to acquisition and logistics but are found nearly everywhere—and their presence on the battlefield is a reality. This article, originally submitted to our Spanish edition, opens up many important questions about doctrine, the chain of command, and legal issues. For other insightful articles on this topic and, in particular, Col Steven J. Zamparelli's "Contractors on the Battlefield: What Have We Signed Up For?" see Issues and Strategy 2000, a special issue of Air Force Journal of Logistics. Using contractors in war is a crucial subject on which our services absolutely must focus more attention.

SHOULD THE UNITED States consider using contractors to help the military wage war? This question no longer requires an answer. Contractors accompany the military into war zones and even into battle—that is a foregone conclusion. During the Gulf War, US contractors maintained equipment and provided technical expertise alongside deployed US military personnel; routinely flew on joint surveillance, target attack radar system aircraft;¹ and even moved into forward areas inside Iraq and Kuwait with combat forces.² Overall, ninety-two hundred contractors and fifty-two hundred civilians deployed to support 541,000 military personnel.³ During Operation Just Cause, 82 contractors deployed to Panama to support aviation assets.⁴ In fact, civilian contractors have quietly taken part in such recent and varied military-run operations as those in Somalia, Macedonia, and Rwanda, as well as those occasioned by Hurricanes Andrew and Iniki and numerous other domestic and international natural

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 2000		2. REPORT TYPE		3. DATES COVERED 00-00-2000 to 00-00-2000	
4. TITLE AND SUBTITLE Waging War with Civilians. Asking the Unanswered Questions				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Air and Space Power Journal,155 N. Twining Street,Maxwell AFB,AL,36112-6026				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 6	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

disasters. They also have a long history of supporting the military. As far back as the Revolutionary War, Gen George Washington employed civilians to move and deliver military goods. Civilians performed logistics functions during both world wars, Korea, and Vietnam, as well as during most US-military-led humanitarian-aid missions.⁵ Currently, contract employees provide food service and other base-support functions, both stateside and in front-line deployed locations throughout the world. They fulfill roles in construction, laundry service, security, communications, sanitation, and recreation, and work as maintainers and translators—and do so in steadily increasing numbers.⁶ During Operations Desert Shield and Desert Storm, one in 50 Americans deployed in-theater was a civilian. By the time of the North Atlantic Treaty Organization's peacekeeping operation in Bosnia, that number had grown to one in 10.⁷ The wave isn't coming—it's here. So today's pertinent question is, What is the best way to utilize contractors in combat? Although each of the US military services is actively trying to answer this extremely difficult, politically charged, and multifaceted question, the process produces many more questions than answers.

One must carefully examine such a dramatic change in fundamental military doctrine—replacing soldiers in combat with civilians—from every conceivable angle because the lives of America's fighting men and women are at stake. As was the case with the introduction of the tank and airplane into warfare, the emergence and development of any new military strategy of waging war bring with them new and unforeseeable dangers. According to Joint Publication 4-0, "Doctrine for Logistics Support of Joint Operations," "the warfighter's link to the contractor is through the contracting officer"—*not* the commander.⁸ One can group the many risks associated with replacing soldiers, sailors, airmen, and marines with contractors into three main categories of questions: (1) How will using contractors affect mission accomplishment? Will it deter an opposing force, or will it create an easily identifiable Achilles' heel?

(2) Will using contractors extend the amount of time needed to complete the mission? Will American forces have to deploy at the slower pace of their contract support? Will the mission and the commander drive the tempo of decisions in battle, or will previously agreed upon contract limitations—which may not fit the current combat situation—act as the driving force? (3) Will using contractors place our service personnel at greater risk of losing their lives in combat?⁹ Are we ultimately trading their blood to save a relatively insignificant amount in the national budget? We must completely and successfully answer these questions because if this grand experiment undertaken by our national leadership fails during wartime, the results will be unthinkable.

What has led the military to head down a path so potentially dangerous? The simple answer is money. Immense budgetary pressures from within and without the Department of Defense (DOD) demand more bang, not for the same, but for significantly fewer bucks. Since the end of the cold war, DOD has shrunk by over seven hundred thousand active duty military personnel, yet has deployed nearly five times more frequently.¹⁰ Furthermore, DOD has cut over three hundred thousand of its civilians since 1989.¹¹ Military spending programs have undergone drastic cuts, funding for modernization has become increasingly competitive with other internal service programs, and military infrastructure and readiness have steadily declined since the previous decade. To solve these problems, Congress ordered DOD to develop ways of cutting costs without cutting services. In response, the military has had to turn to reengineering, competitive sourcing, and privatization of more and more military functions.

Is using contractors the right answer? What makes this option attractive? Again, the answer is money. According to Gen Bill Tuttle, US Army, Retired, president of Logistics Management Institute, based in Washington, D.C., the Army can cut logistics costs by up to 20 percent by using civilian contractors.¹² Although the amount of actual savings produced by privatizing support and logistics services is

debatable, even the most conservative estimates indicate that DOD can save a significant amount of its total obligation authority by contracting out most of its support functions and a large part of its logistics manpower.

In at least one area, using civilian contractors is more flexible than deploying service personnel into combat areas. When, during planning for the Bosnian peacekeeping operation, President Bill Clinton promised to limit the number of deployed troops to fewer than 20,000, his authority to deploy over two thousand additional civilians gave him the political flexibility to send in additional manpower to support the operational force.¹³ Similarly, during the Vietnam War, President Lyndon Johnson avoided congressionally mandated troop ceilings by employing over 80,000 contractors during the most intense part of the war.¹⁴ Regardless of the potential ethical questions of skirting US law by choosing to count involved civilians differently than uniformed war fighters, this option has the potential to utilize a larger combat force in a politically sensitive situation. Given the recent tendency of the United States to fight as part of a multinational coalition, this additional flexibility becomes important.

As this trend toward privatization increases in popularity, negotiating and working with a single contractor having a large number of employees should prove easier than managing many contractors having only a few employees each.¹⁵ Today, the military services negotiate many small contracts yearly, but as DOD increases its expertise and becomes more familiar with both contractors and the contract process, it will naturally return to the familiar and the satisfactory. DOD will not rehire contractors who provide poor service but will send more government business to successful contractors. Finally, using contractors may make DOD eventually forget one of the military's steadfast rules: it takes eight years to gain eight years of experience. In terms of "growing your own" soldier, this is true, but DOD can hire contractors at whatever experience level it requires. If the Army, for example, needs to hire four hundred technicians

with 10 or more years of experience in maintaining rotary-wing aircraft, it can contract for exactly that. Contractors can provide expertise on a case-by-case basis, without the cost of training, housing, and paying individuals for the previous 10 years.¹⁶

What are the possible downsides of going to war with civilians? One of the most obvious is the loss of flexibility, one of the key tenets of successfully waging war. A commander's freedom and ability to improvise quickly in using tactics, employing weapons, and deploying personnel have long been considered essential to victory in combat. A contract—a legal, binding document—even when written with the best of intentions, cannot cover every possible contingency in advance. To stop during wartime, no matter how briefly, to rewrite or renegotiate a contractor's obligations severely limits a commander's ability to accomplish the mission. Writing contracts that take into account every possible aspect of the agreement will become extremely important and will eventually require every field commander to become an expert not only in the art of writing contracts, but also in contract law itself. Anything less will place both the commander and his or her command at risk.¹⁷

In past years, DOD took pains to make sure that the bulk of its weapon-system expertise remained based in either uniformed military personnel or DOD civilians. DOD Directive 1130.2, *Management and Control of Engineering and Technical Services*, now rescinded, required the military to quickly become proficient in maintaining and employing new systems, while limiting contractor support to just one year. In fact, Congress now *requires* contractor support for four years for new weapon systems and for the lifetime of noncritical systems.¹⁸

Many questions remain unanswered about how we will fight wars and use contractors in these new roles. Since contractors are legally classified as noncombatants, will they require protection by military forces, or will their presence drive changes to the internationally recognized—although not always followed—laws of armed conflict? This problem becomes especially difficult to solve when the threat is

nuclear, biological, and/or chemical. International law such as the Geneva Convention does recognize the necessity of civilians' support for combat forces but only in noncombatant roles that keep them out of direct engagement with enemy forces. Although the world community generally recognizes an international legal precedent for civilians to provide support during war, advances in weapon systems and changes in war-fighting strategies have blurred the lines between support and combat, combatant and noncombatant, and civilian and soldier.¹⁹ An additional problem resides in the "no looking back" nature of contractor support, especially when it comes to military force structure. If, after a five- or 10-year trial period, the concept does not prove successful, the military will find itself unable to instantly grow, train, and benefit from the experience of the mid- and upper-level managers now developed within the enlisted and officer corps. It will take close to an entire career of 20 years before the military can regain the capability now resident in its personnel.

Other challenges also loom large. How will the military determine that contractors can meet their responsibilities, especially during peacetime? An inability to perform during wartime may become quickly and painfully apparent, but problems with contractor readiness may prove harder to detect prior to actually deploying into combat. Under current DOD directives, the military continuously monitors the readiness of its units for combat operations. The services' inspectors general and command-level oversight organizations make independent determinations about whether units are sufficiently manned, equipped, trained, and able to complete their missions. Will contractors have to agree to inspections that evaluate this same level of preparedness? Who will do these inspections, and how will they conduct them? What will happen when a contractor who receives an unsatisfactory rating challenges this finding in court?

How will the services' acquisition and logistics communities integrate contractor sup-

port in the theater of operations? Although contractor personnel do not fall under the operational chain of command of the commander in chief (CINC), coordination of contractor support and the flow of contractor materiel cause significant theater concerns and issues. The CINC is responsible for the flow of equipment, personnel, and materiel into the theater. The uncoordinated flow of contractor personnel and equipment competes for airframes, airfields, transportation, and road/raid networks both intra- and intertheater. Because these incoming shipments/personnel often arrive in-theater without the CINC's awareness, he or she loses the ability to plan and prioritize movement and distribution throughout the theater. This situation is a direct result of the gap between the acquisition and logistics communities. Currently, the services' program offices, materiel commands, and inventory-control points independently write logistics-support contracts without consideration for the integration of logistics support in the theater of operations.²⁰ Will we put in place a contractor-information system to give the theater CINC visibility and control over theater assets? How will we conduct strength accounting for civilians deployed in-theater? Will this become the responsibility of the current military-personnel function, which, like many other military career-field specialties, finds itself under scrutiny for competitive sourcing?

Will the services' contracting agencies write contracts flexible enough to allow for rapid mission changes, just as military units must allow for them? Also, after civilians receive assignments to a combat theater, what procedures will govern their rotation, and how will we handle transportation into and out of hostile-fire areas? Although the Joint Staff currently addresses this dilemma by including contractors in time-phased force and deployment data planning, this does not solve the problem.²¹ For every contractor occupying a seat on a transport aircraft, one fewer soldier arrives in-theater. In addition, how does DOD Directive 1404.10, *Emergency-Essential (E-E) DOD U.S. Citizen Civilian Employees*, which

describes the assignment of E-E duties to DOD civilians, differentiate between traditional DOD employees and contracted civilians?²²

After meeting the provisions of the US legal system, we may not solve many difficulties with having contractors provide combat support. If the United States continues to enter conflicts as a partner of a multinational force, it will have to observe international laws. How will our coalition partners in future conflicts react to our civilians serving alongside them on the battlefield? If they have an objection, will we honor it? We may have to negotiate new host-nation agreements for every specific operation.²³ If a host government of a sovereign state refuses to allow DOD contractors to enter the country because they are not military personnel, what options does the United States have? What if a contractor depends upon using local workers as part of its workforce—and the host nation refuses? Based on their standing as non-combatants, contractors may not receive protection under a host country's Status of Forces Agreement with the United States.²⁴ What provisions will Congress make for the pay and taxation of civilians serving in hostile-fire zones or other situations distinguished by special provisions regarding pay and/or allowances for military personnel? Will we have to establish a new category of pseudo-military taxpayer? What if the situational realities of a deployment make it impossible for a contractor to honor the terms of the contract? If a negotiated contract requires a contractor to arrange for commercial airlift into a theater, what happens if no commercial airlines can provide that service? What if no developed airfields exist and only military aircraft can reach the theater? Certainly, the US government cannot expect a contractor to honor contractual terms that prove impossible or even unreasonable. Also, what process will the two parties use to reach a mutual agreement that the terms of a contract are indeed impossible for the contractor to honor? Will contracted personnel have to provide for their own food, lodging, and medical treatment in-theater? Although DOD Instruction

3020.37, *Continuation of Essential DOD Contractor Services during Crises*, entitles contractors to the same medical care as the military while they remain in-theater, what liability does DOD have in areas with only the bare minimum of medical treatment?²⁵ We will have to answer these and many other questions, not only for each contract that DOD enters into, but also each time forces enter a combat zone.

Some of the most troubling questions concern chain of command and authority. In general, contractors are not subject to the same orders that apply to soldiers regarding good order and discipline.²⁶ Should they be? Will agreements negotiated in current contracts prove sufficient to meet the requirements of every possible future scenario? Legally, DOD cannot direct contractors to enter into a hostile-fire area unless Congress has formally declared war. One has to go back to World War II to find the last US declaration of war, despite the number of armed conflicts in which we have engaged over the last 50-plus years. We find DOD's current (but unsatisfactory) answer to this dilemma in DOD Instruction 3020.37, which states that the commander should find his or her own alternatives.²⁷ During the American Civil War, wagon drivers hired to deliver supplies to Army posts on the Western frontier became increasingly harder to find, so soldiers—who didn't have the option to quit—eventually replaced them.²⁸ Many people critical of the use of contractors also recall the infamous tree-cutting incident in Korea in 1976 that resulted in the death of an Army officer and upgraded our defense condition to level three. As a result, hundreds of Army civilians requested immediate transportation out of the Korean theater.²⁹ Will future contractors guarantee that their employees will not resign, quit, or request a transfer after assignment to a combat zone? What good will it do the US military to have a guarantee of “no stay, no pay”? Once the fighting starts, the objective is no longer to cut costs or save money but to accomplish the wartime mission. In days past, the local commander could routinely turn to his troops to perform tasks

other than their primary specialty when the work required relatively little skill or training. Given today's sophisticated weapon and support systems, however, turning to military members in times of contractor failure will become less of an option. This contingency, more than any other, might dominate battle planning for military commanders of the next generation.

What lies ahead for the US military? At what point do cost-saving measures begin to detract from mission effectiveness? Can we measure a cost-saving price against the life of a single US soldier? Will the current US legal system allow the presence of civilians in combat but prevent their suing the US government at every opportunity? Will the contractors' goal of making as much money as possible eventually conflict with the military's goal of accomplishing its mission? And what will be the long-term effect of having contractors work alongside service personnel? As far back as the Revolutionary War, soldiers could

compare their salaries to those of civilians alongside them who engaged in logistics-support roles. Even then, disparities in wages and working conditions made it difficult to reenlist soldiers.³⁰

The sheer size of contractors' support, their proximity to the battlefield, and the criticality of their contribution to mission accomplishment make this issue so important.³¹ Cuts in both uniformed and DOD civilian personnel, government pressure to privatize or outsource work traditionally performed by the military, and a growing need for contractors to maintain increasingly sophisticated weapon, logistics, and communications systems have forced the military services to use contractors to accomplish the mission.³² Using contractors on the battlefield seems the optimal solution to this difficult task—just ask any field commander. Hopefully, DOD will find solutions to the many unanswered questions before the next war. □

Notes

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